

The court acknowledged that MCA's use of the song was dilutive given that the song was widely popular and as a result may have caused consumers to think of both the song and the doll when hearing Barbie's name. *Id.* at 903-904. However, despite this dilution and the fact that MCA used Barbie's mark to sell copies of the song, the song also lampooned the Barbie image and used humor to comment on the cultural values the band claimed she represents. *Id.* at 907. Therefore, because the song did more than propose a commercial transaction it was entitled to full first amendment protection. *Id.* at 906-907. The *Twiharder* film lampoons the values and wholesome image projected by the *Twilight* saga, in the same way that the makers of the song "Barbie Girl" did with the famous doll.

Finally, in *Bourne Co. v. Twentieth Century Fox Film Corp.* 602 F.Supp.2d 499 (2009) the copyright owner of the popular song, "When You Wish Upon a Star" brought a copyright infringement action against the creators and producers of the animated series *Family Guy* for use of a similar song titled "I Need a Jew" in an episode of their series. The court held that the song was a parody, sufficiently transformative, and that the importation of the melody was protected fair use. *Id.* at 509, 511. Judge Batts added that while the "Plaintiff reaps the benefit of their song's association with Pinocchio and Disney, and enjoys its reputation for wholesomeness; it is precisely that beneficial association that opens the song up to ridicule by parodists seeking to take the wind out of such lofty, magical, or pure associations." *Id.* at 511. As explained above, *Twiharder* embodies that exact approach, mocking *Twilight's* wholesome associations, and therefore, similarly qualifies for fair use protection.

One repeated objection to our usage, is that you believe the film borrowed too much from the *Twilight* saga. You distinguish our film from other commercially available *Twilight* parodies, such as *Vampires Suck* or *Breaking Wind* (the latter of which is ironically distributed by your client's parent company) which parodies other copyrighted characters but borrow substantially from *Twilight*. To begin with, *Twiharder* does not exclusively focus on the *Twilight* Motion Pictures. Instead, the film pokes fun at a broad array of entertainment subjects drawn from various works of film, television, videogame, song, and literature. In this way, *Twiharder* embodies the same approach as that found in the *Vampires Suck* film. As you point out, while the *Vampires Suck* film focuses on the *Twilight* Motion Pictures it does not do so exclusively, because it also spoofs other vampire films and references various unrelated entertainment subjects. Similarly, *Twiharder* goes beyond referencing *Twilight* and also spoofs: the videogame franchise Super Mario Brothers; the popular song by Right Said Fred titled "I'm Too Sexy"; the television shows *To Catch a Predator*, *True Blood*, and *The Brady Bunch*; the celebrity gossip outlets, TMZ and Extra; Ted Danson; and finally, *Romeo and Juliet*.

The *Twiharder* film is also in no way a scene-by-scene retelling of the *Twilight* Motion Pictures. The majority of scenes in *Twiharder* are entirely original and have no direct reference to any comparable scene in the *Twilight* saga. In this regard, the *Twiharder* parody borrows



substantially less from the original work than *The Wind Done Gone* parody took from *Gone With The Wind* in *Suntrust*. *Id.* at 1272. The court in *Suntrust* acknowledged that the parody novel borrowed a substantial portion of the original work including various settings, plot twists, and at least fifteen characters, yet the court still found the work sufficiently transformative. *Id.* at 1268.

Most importantly, the *Twiharder* film makes reference to being a film throughout the picture, while *Twilight* does not. This fundamental difference in perspective not only makes the parody transformative and transparent that it's a parody, but it also provides a means for direct commentary on the original work. In this way, the *Twiharder* film is analogous to the novel in *Suntrust* because both involve a transformative shift in perspective which distinguishes the parody from the original work. For example, a scene in *Twiharder* where the three main characters are being interviewed on a talk show similar to *Extra* provides an opportunity to make jokes about the absurd plot line. The scene that depicts a crowd of screaming, teenaged girls, a.k.a. "Twihards" who beg the actors for autographed headshots, makes fun of the fan base and celebrity culture of the actors. Finally, there are multiple scenes that depict an audience screening the film and offering humorous commentary on the picture as it occurs. At one point, a main character interacts with the audience and says, "Just watch the movie. Everyone wants to be a critic." Here, the parody is commenting on film critics and the actor's response to them.

As has been stated before, the *Twiharder* film is the quintessential parody and is therefore protected under the First Amendment. This letter is for the purposes of settlement only. This is not a full statement of our client's rights and remedies, all of which are expressly reserved.

Very Truly Yours,



DEAN R. CHELEY, ESQ.

DRC/jmm